

A Family Law Department
Client Guide on
Parental Responsibility and
Guardianship

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PARENTAL RESPONSIBILITY AND GUARDIANSHIP

General Comments

This leaflet provides an outline of the legal position for parents and carers. It is not a complete guide to the law and is not intended to be a guide as to how the law may apply to you or any specific situation. For more specific advice please do not hesitate to contact one of the solicitors listed at the end of this Guide.

1. Parental Responsibility

The Children Act 1989 introduced the concept of Parental Responsibility with the Act emphasising that it is important that parental responsibility is considered as the responsibility for children rather than the rights over children.

Parental Responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law the parent of a child has in relation to the child and his or her property”.

Examples of Parental Responsibility include the following:

- Choosing a child's name
- Consent to a child's medical treatment
- Choosing a child's religion
- Choosing a child's schooling
- Consent to the child's marriage if they are under 18
- Trips abroad

2. Who can obtain Parental Responsibility?

- 2.1. The child's mother - The child's biological mother automatically has PR for the child
- 2.2. The child's father is married to the mother - If the child's father is married to the child's mother at the time of the birth or subsequently, he obtains parental responsibility for the child.
- 2.3. Unmarried father - An unmarried father can obtain parental responsibility in the following ways:
 - 2.3.1. Being registered as the father on the child's Birth Certificate if registration took place after the 1st December 2003.
 - 2.3.2. Entering into a Parental Responsibility Agreement with the mother of the child.
 - 2.3.3. Obtaining a Court Order.
 - 2.3.4. Being appointed as a Guardian to the child by the child's mother, the Court or another Guardian.
- 2.4. Step parent - A step parent can now obtain parental responsibility by entering into a Parental Responsibility Agreement with the mother and with the agreement of any other person who has parental responsibility for the child. Step parents can also make an application to the Court for Parental Responsibility.
- 2.5. Special Guardian - Under the Adoption of Children Act 2002 which came into force in December 2005 a Special Guardian, upon a Court ordering a Special Guardian Order can obtain parental responsibility for the child. A Guardian also has parental responsibility for a child.
- 2.6. A person who obtains a Residence Order - A person who obtains a Residence Order for a child automatically acquires parental responsibility for the child once a Residence Order is in force.
- 2.7. If the child is adopted the adoptive parents obtain parental responsibility and the birth parents lose this.

Parental Responsibility remains with the people who have parental responsibility for the child even when the child is subject to certain Local Authority proceedings such as an Emergency Protection Order, an Interim Care Order and a Final Care Order. If the Local Authority obtain any of these Orders, the Local Authority and the parties with responsibility share parental responsibility for the child.

However, if a Court orders an adoption or the parties with parental responsibility consent to the adoption of the child, upon the Adoption Order being made the parental responsibility rights of people who previously had this will be extinguished.

Several parties can have parental responsibility for a child at the same time and one person cannot lose parental responsibility just because another party obtains this.

3. How can Parental Responsibility be obtained?

As stated earlier, a mother automatically has parental responsibility for a child, as does the father if he is married to the mother at the time of the birth or subsequently, or in the case of an unmarried father if they were registered on the Birth Certificate as the child's father with registration taking place after the 1st December 2003.

However, other parties if they require parental responsibility can obtain parental responsibility in a number of ways. These are as follows:

3.1. Parental Responsibility Agreement

A Parental Responsibility Agreement can be made between the parties if one party has parental responsibility for the child and agrees to the other party acquiring parental responsibility. Since December 2005 step parents can enter into a Parental Responsibility Agreement in respect of the child. An Agreement is prepared, both parties have this witnessed and it is registered in the Principal Registry of the High Court in London.

3.2. Upon a Court Order

If an Agreement cannot be reached regarding parental responsibility, an application can be made to the Court for a Parental Responsibility Order to be made. The Court on considering such an application would consider the following factors:

- The welfare of the child is the Court's paramount consideration
- Whether the association between the party and the child is sufficiently enduring
- The parties conduct - has the party shown commitment to the child
- The level of attachment between the party and the child
- The party's reason for applying for Parental Responsibility.

Upon a Residence Order being made, the party in whose favour of a Residence Order has been made, automatically obtains parental responsibility for the child.

4. When does Parental Responsibility end?

Parental Responsibility ends when the child reaches 18 or if the child dies but a Court Order or a Parental Responsibility Agreement can be discharged by the Court earlier if it considers it to be appropriate. Also, if a Residence Order ends, then the Parental Responsibility Order ceases.

If a child is adopted then the Parental Responsibility that the birth parents have for the child is terminated. The Parental Responsibility that a Guardian or Special Guardian may have can be terminated by the Court or the Guardian.

5. Guardianship

A Guardian may be appointed in respect of a child under the age of 18 by the Court where the child has no parent with parental responsibility for him or when a Residence Order has been made in respect of a parent or a guardian and that person has died.

A parent who has Parental Responsibility or a Guardian can appoint a Guardian who is to have parental responsibility if they die. There can be more than one guardian appointed if appropriate.

6. How can Guardianship be revoked

Guardianship can be revoked by another Guardian being appointed at a later date, by the appointment in writing of the Guardian being destroyed or if the Court appoints a Guardian, the Court can terminate this upon an application by the person with parental responsibility for the child or by the Court's own motion.

7. Special Guardianship Orders

The Adoption and Children Act 2002 introduced a new kind of Order called the Special Guardianship Order. This was introduced in December 2005 and a Special Guardianship Order is considered to be

suitable for children in Local Authority care who are not considered suitable for adoption and who wish to retain ties with their birth family but also require stability and permanence regarding a placement.

This Order gives a Special Guardian parental responsibility for the child until the child is 18 but the birth parents also retain their parental responsibility unlike if the child was adopted when they would lose their parental responsibility. However, parental responsibility is extremely limited, as the Special Guardian only has to consult the birth parents in exceptional circumstances such as change of the child's surname or if the child was out of the country for more than 3 months.

8. Who can apply to be a Special Guardian?

The following can apply to the Court for a Special Guardianship Order:

- Local Authority Foster Carer that the child has lived with for one year immediately preceding the application.
- Anyone who has the consent of all the people who have parental responsibility for the child.
- Any person who has leave of the Court to apply for an Order.
- When the child is in the care of the Local Authority anyone who has the Local Authority's consent
- The Guardian of the child
- Anyone who has a Residence Order or anyone who has the consent of the person who has a Residence Order for the child.
- Anyone the child has lived with for 3 years in the last 5 years.

The Application is made to the Court and the party who is making the application for a Special Guardianship Order must give the Local Authority three months notice before they intend to apply for a Special Guardianship Order to allow a Local Authority to prepare a report on the application. A Court cannot make an Order without a report being filed to the Court by the Local Authority.

The Special Guardianship Order remains until the child is 18, unless the Court varies or terminates this or if the child dies.

For the birth parents, the making of a Special Guardianship Order means that they do not lose their parental responsibility (although it is limited) and therefore retain their right to refuse to consent to an adoption if that is envisaged by the Special Guardian. The birth parents can also apply for contact which they would be unable to do if the child were adopted and it is key to note that a Special Guardianship Order can be varied or discharged whereas an Adoption Order is final.

For further information please contact:

- Mr I A Yates - Solicitor
- Mr N W Davies - Partner
- Mr G Banks - Solicitor
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